Supreme Court, U.S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1608

STATE OF MICHIGAN,

Petitioner,

v.

LOREN TYLER and ROBERT TOMPKINS,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PETITION FOR CERTIORARI FILED MAY 16, 1977
CERTIORARI GRANTED OCTOBER 3, 1977

TABLE OF CONTENTS

	Page
Relevant Docket Entries	1
Reference to Opinions Below	3
Motion to Suppress Evidence, with Supporting Affidavits	3
Reference to Selected Exhibits	7
Excerpts of Transcript of Trial	8

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STATE OF MICHIGAN,

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LOREN TYLER and ROBERT TOMPKINS,

Respondents.

RELEVANT DOCKET ENTRIES

1970

July 24. Information filed in Oakland County Circuit Court.

December 23. Motion to suppress evidence filed.

1971

March 8. Motion to suppress evidence denied.

May 3. Jury trial begins.

May 24. Respondents found guilty.

June 15. Respondents sentenced to from 1 1/2 to 10 years in prison.

1973

November 1. Respondents' convictions affirmed by Michigan Court of Appeals.

1977

February 14. Respondents' convictions reversed by Michigan Supreme Court.

May 16. Petition for certiorari filed in this Court.

October 3. Certiorari granted.

REFERENCE TO OPINIONS BELOW

The opinion of the Michigan Supreme Court is reported at 399 Mich 564; 250 NW2d 467, and is printed at page 17 of the petition for certiorari. The opinion of the Michigan Court of Appeals is reported at 50 Mich App 414; 213 NW2d 221, and is printed at page 36 of the petition.

MOTION IN THE OAKLAND COUNTY CIRCUIT COURT BY LOREN TYLER AND ROBERT TOMPKINS TO SUPPRESS EVIDENCE

(In the Circuit Court
For the County of Oakland)

(Filed December 23, 1970)

NOW COME the defendants Loren Tyler and Robert Tompkins and herewith move this Court to suppress all of the evidence seized by the plaintiff from the premises known as Tyler's Auctions, Inc., 6959 Highland Road, Waterford Township, Michigan, for the following reasons and grounds:

1. That the said evidence was seized from Tyler's Auctions, Inc. without the knowledge, consent or approval of the defendant-occupant, to wit, Loren Tyler.

2. That the said evidence was seized without a search warrant.

3. That the said evidence was seized without a simultaneous arrest being made, for any person whatsover.

4 That the said evidence was seized without there existing probable cause on the part of the officer seizing them to believe that a crime had been committed.

5. That the evidence seized wrongfully and illegally by the plaintiff consists of various plastic containers, alleged gasoline liquid, pieces of fuse, pieces of carpeting, pieces of wood, various bottles, pieces of window plate glass, and various other materials.

WHEREFORE defendants Loren Tyler and Robert Tompkins pray that this Honorable Court will suppress all the evidence seized by the plaintiff from the premises of Tyler's Auctions, Inc., 6959 Highland Road, Waterford Township, Michigan, and suppress all of said evidence against Robert Tompkins and Loren Tyler in any criminal proceedings.

Jesse R. Bacalis & Associates, P.C.
By Jesse R. Bacalis
Attorney for Defendants Loren
Tyler and Robert Tompkins only
1510 Ford Building
Detroit, Michigan 48226
961-3325

December 22, 1970

[NOTICE OF HEARING OMITTED IN PRINTING]

AFFIDAVIT IN SUPPORT OF MOTION TO SUPPRESS

State of Michigan
County of Wayne—ss.

NOW COMES Jesse R. Bacalis, who first being duly sworn, deposes and says as follows:

1. That he is the attorney of record defending Loren Tyler and Robert Tompkins, and that he did handle the examination in the 51st Judicial District Court, for which the subject cause has been bound over for trial in Circuit Court.

2. That during the course of said evidence and testimony the following witnesses admitted taking evidence without a search warrant, and without making a simultaneous arrest at the time of the seizure of said evidence:

A. Chief of the Fire Department, Russell See, on Jan. 22, 1970, seized several plastic containers and the liquid contents thereof.

B. Sgt. Richard Huffman of the Michigan State Police Arson Bureau on January 26, 1970 and again on February 16, 1970 seized pieces of fuse, carpeting, broken pieces of window plate glass, glass bottles and pieces of wood material.

3. That all of said evidence taken was taken without the knowledge, permission or consent of Tyler's Auctions, Inc., or Loren Tyler.

4. That the People have claimed permission and consent from the owner of the building, Mr. Maynard W. LaLonde.

5. Mr. Maynard LaLonde has testified that Mr. Loren Tyler was a tenant on a month-to-month basis during January, 1970 and that he had permission to leave his fire residue material in the said premises after the fire.

Further deponent saith not.

Jesse R. Bacalis

Subscribed and sworn to before me this 22nd day of Dec., 1970.

Linda Jorden

Wayne County Notary
My commission expires: 9-18-73.

AFFIDAVIT OF LOREN TYLER

State of Michigan
County of Wayne—ss.

NOW COMES Loren Tyler, who first being duly sworn, deposes and says:

1. That he is one of the defendants in this cause.

2. That various items of evidence were seized by the Chief of the Fire Department, Russell See, and by Sgt. Huffman of the Michigan State Police Arson Division, and that all such seizures were made without the knowledge, consent or approval of Tyler's Auctions, Inc., and without the knowledge, consent or permission of Loren Tyler.

3. That he has never been presented with a search warrant, and to his best knowledge and information no search warrant has ever been obtained.

4. That the seizure of evidence was made on the morning of the fire, January 22, 1970, and on February 16, 1970, and at neither one of these times was either Loren Tyler or Robert Tompkins simultaneously arrested.

5. That the warrant in this cause was issued April 7, 1970.

Further deponent saith not.

Loren Tyler

Subscribed and sworn to before me on .....

(s) .....

Notary Public, ...
My commission expires: .....

REFERENCE TO SELECTED EXHIBITS

Both parties agree that, of the numerous items of physical evidence admitted at trial, twenty-four (24) photographs are especially relevant to the issues in this case and should be available for the Court's inspection. These photographs have been placed in a separate envelope containing a notation to that effect, as well as the case name and number. The clerk of the Oakland County Circuit Court has been asked to place this envelope at the top of whatever container is used to transmit the record.

EXCERPTS OF TRANSCRIPT OF TRIAL

[Maurice Prieur and George Pisula were tried along with Respondents and were acquitted. The trial attorneys were:

Mr. Cooper: Prosecutor
Mr. Bacalis: Attorney for Tyler and Tompkins
Mr. Bain: Attorney for Prieur
Mr. O'Brien: Attorney for Pisula.]

RUSSELL SEE

Direct Examination

By Mr. Cooper:

(142) * * * Q. And what is your — what do you do once you get to a fire of one of these buildings?

A. Direct the operations in extinguishment of the fire.

Q. Do you have any other duties or responsibilities at these fires?

A. Well, trying to determine the cause and make out all reports.

Q. Uh-huh. All right, now, did you have an occasion to be called to Tyler's Auction on the early morning of January 22nd, of 1970?

A. Yes, I did.

Q. And approximately what time did you arrive at the scene?

A. I believe between 2:00 a.m. and 2:30 a.m.

* * *

(143) Q. Ok. Now, do you — can you describe this night to us, can you tell us what the weather conditions were?

A. The — I believe it was quite cold, I don't recall any snow being on the ground at the time, though.

Q. Ok. And when you first arrived, in front of the building and got out of your staff car, what did you do next, if anything?

A. I met with Lieutenant Lawson.

Q. Did you have a conversation with him?

A. Yes, I did.

(144) Q. And after your conversation with Lieutenant Lawson, what did you do next, if anything?

A. We entered the building.

Q. Now, when you say you entered the building, where did you enter the building, by what means?

A. The front entrance, sir.

Q. The front door?

A. Yes.

Q. And was the door opened or closed when you entered?

A. I believe it was open then.

Q. Did you have to turn the knob to get in or was it already opened and you just walked in?

A. No, it was already opened, we just walked in.

Q. And after you walked in the building, sir, could you describe what you saw when you walked in?

A. Yes, I believe the first thing that was brought to my attention was a couple of plastic containers, laying on the floor of the showroom.

Q. Now, I'll ask you whether or nor, sir, you can orientate yourself to People's exhibit number one, which has been admitted into evidence, and it is a sketch of Tyler's Auction.

A. Is this 59 [Highway M-59] here?

Q. That's the front door.

(145) A. Ok, yes. As I recall, we came in the front door, and over into this area here first, where we first —

Q. All right, now, sir, I want you to look at the exhibit which is on the stand here. All right, now, can you orientate yourself with that diagram?

A. Yes. We walked in the front door, and we turned to our right, and walked into the showroom area.

Q. Now, these plastic containers that you observed, where did you see them sitting?

A. They were laying on the floor.

Q. Whereabouts on the floor?

A. Oh, I believe one was pretty much center of the showroom area, and one just a short distance away.

* * *

(151) Q. Now, sir, as you walked into the building, did you have any difficulty seeing once you got inside the building?

A. The building was still — we had to use portable lights that we carry on our equipment in order to see inside the building. However, the building was still filled with smoke and —

Q. Would there be any steam?

A. Steam, this is what I was trying to say, yes.

Q. What causes the steam, sir?

A. Well, water, applied to heat usually creates the steam, and fills up the building. This is the problem we encounter between this and smoke, yes.

* * *

(153) Q. Now, approximately how long were you in the building that night?

(154) A. Possibly an hour.

Q. Possibly an hour?

A. Yes.

Q. Ok. And after you left the building, where did you go next, if any place?

A. Went directly back to the station when we left the building, and — with this process here.

Q. Uh-huh. Now, sir, after finding these containers, and after having gone through the building and looked around, did you have an opinion as to what caused the fire?

A. I felt it could have been caused possibly from this type of liquid.

Q. Accidentally set, sir?

A. It didn't appear as such, no.

Q. Did you think that possibly it could have been arson?

A. Yes.

Q. And did you ever contact the police concerning this matter?

A. I contacted Detective Webb, immediately.

Q. Now, when did you contact Detective Webb?

A. I think shortly after I arrived.

Q. In other words, you were still at the building, you know, when you contacted Detective Webb?

A. Uh-huh.

(155) Now, while you were at the building, did you see Detective Webb there?

A. Yes, sir.

Q. And after you called him, approximately how much time elapsed before Detective Webb arrived at the scene?

A. Maybe a half hour.

Q. Now, had you picked up People's proposed exhibits number two and three, that being the containers, before Detective Webb arrived?

A. I don't recall, sir. I don't believe so..

Q. Uh-huh. Ok. And to your knowledge, how long did Detective Webb stay there?

A. Probably half, three-quarters of an hour.

Q. Was he there when you left, sir?

A. We left together.

Q. You left together?

A. That's right.

Q. Then you said you went back to the fire department, is that correct?

A. Yes, sir.

Q. Now, did you see Detective Webb back at the fire department?

A. I did.

Q. To your knowledge, was he present when the liquid from one of the (156) containers, two and/or three, proposed exhibit, was poured into People's proposed exhibit number four?

A. I believe so.

Q. Now, sir, after the liquid was taken from the containers and put into number four, at the fire station, what did you do with People's proposed exhibits two, three, and four next, if anything?

A. I believe we put them in paper bags and labeled them, if I'm not mistaken.

Q. And did they remain at the fire department or go to the police department?

A. I believe these were turned over to the detective at that time.

* * *

Cross Examination on the Exhibits

By Mr. Bain:

(157) Q. Now, when they called you, was there any discussion regarding these containers?

A. Outside of the building, when I first got there, yes.

Q. Outside of the building, there was?

A. Yes.

Q. Who was that discussion with?

A. Lieutenant Lawson.

Q. Did he indicate to you he felt there was any foul play of any kind, or might have been?

A. He felt that this was possible.

Q. And subsequent to that time, you entered the building with him to see these containers?

A. Yes.

Q. So that at the point you entered that building, you suspected that there may have been foul play, is that true?

A. On his say-so, yes.

Q. On Lieutenant Lawson's say-so?

A. Yes.

* * *

Cross Examination on the Exhibits

By Mr. Bacalis:

(158) Q. Chief, when you arrived at the building, did you attempt to determine what caused the fire?

A. To determine the cause of the fire?

Q. Did you make an investigation to determine what caused the fire?

A. At that time, to the best of our ability, with artificial lighting, we did.

Q. And you formed an opinion then, as to what caused the fire, based upon what you observed that night when you were there, or that morning?

A. That morning, yes, I did. I felt that this could possibly have been an arson, with that liquid there.

* * *

(160) Q. The question is did you or did you not determine what caused that fire that night, based upon what you could see?

A. That night, I determined that it could possibly have been caused by this liquid.

Q. Now, at that point, you did not have a search warrant, did you?

A. No, sir.

Q. At that point, you did not have permission to take anything from the building, is that correct?

A. Well, we were — the department had never left the building, sir, and it's our duty or my duty, I should say, as Chief, to try to preserve any evidence that may lead to — I feel could be suspicion, to lead to foul play.

Q. But that isn't what I asked you, was it?

A. Would you repeat your —

Q. The question was, you didn't have the consent or permission from anyone other than this authority you thought you had?

(161) A. Right, yes, sir.

Q. To take objects from this building, is that correct?

A. That's correct.

Mr. Bacalis: I object to the evidence on the ground, no proper foundation has been laid, and an illegal search.

The Court: Objection overruled, exhibits two, three and four are received in evidence.

* * *

Cross Examination

By Mr. Bacalis:

(162) Q. Chief, was the fire completely out when you arrived?

A. Yes, most of it. I mean they were — when I arrived they were just watering down smoldering embers.

* * *

(168) Q. How many times were you there at that building?

A. How many times was I there?

Q. Yes?

A. Twice, I believe.

Q. That would be the early morning of the 22nd, is that right?

A. The morning of the fire.

Q. Thursday, the 22nd of January?

A. Yes.

Q. Early morning, 3:00 a.m., right?

A. Right.

Q. When was the next time you were there?

A. Next time I was there, the following forenoon, with the Fire Marshall or Assistant Chief.

Q. Would that be Thursday, the same day?

(169) A. Same day, yes.

Q. Total of how much time was spent there?

A. (No answer)

Q. In your examination?

A. My examination was that evening, or that morning of the fire. The next day, the Assistant Chief made the other investigations.

Q. My question was directed to you, personally, how much time did you spend on the scene?

A. Approximately two hours.

* * *

Q. My question was with reference to investigation, other than extracting exhibits two and three, what did you do by way of investigation?

A. Looked throughout the rest of the building to see if there was any further evidence, to determine what the cause of the fire was.

* * *

(171) *Re-Direct Examination*

By Mr. Cooper:

Q. After you thought this possibly may be an arson, Chief, you indicated that you called the police. Why did you call the police?

A. To take pictures.

Q. Is it their duty to investigate, after you make this ascertation, or that it possibly could be?

A. Yes.

Q. You didn't investigate with the police department?

A. No.

* * *

DONALD SOMERVILLE

Direct Examination

By Mr. Cooper:

(173) Q. All right. Now, sir, did you happen to be at Tyler's Auction on January 22, 1970?

(174) A. Yes, sir, I was.

Q. And approximately what time did you arrive at Tyler's Auction?

A. Shortly after 8:00 a.m.

Q. 8:00 a.m. in the morning?

A. Yes, sir.

Q. And was anyone with you when you arrived at 8:00 a.m.?

A. Yes, sir, Chief Russell See of the Waterford Fire Department.

Q. Now, why did you have an occasion to go to Tyler's Auction on the morning in question?

A. Part of my job is to determine the cause and origin of all fires that occur within the Township.

Q. And that was the reason then you were there on the morning in question?

A. Yes, sir.

Q. Were you there at anyone's direction?

A. Yes, sir, I was there, of course, at the Chief's direction. When I arrived at work that morning, he advised me of the fire that had occurred the night before.

Q. All right. Now, at that time, did you discuss anything with the Chief? Prior to the time that you went to the fire or the place of the fire?

A. I cannot recall, sir.

Q. At the time that you arrived at Tyler's Auction, what did you (175) do, after you arrived, if anything?

A. Well, when we first arrived, I just entered the building, and, with the Chief, made a cursory examination of the damage that had been caused by the fire.

Q. Ok, now, you recall, for example, sir, what door you entered?

A. Yes, sir, we entered the front door, the main door of the building.

Q. Was that door locked when you arrived?

A. Yes, sir.

Q. You just walked right in?

A. Yes, sir.

Q. Now, sir, do you recall whether or not there's any windows in the front of that building?

A. Yes, there was.

Q. And do you remember how many windows there are?

A. No, I can't recall, off-hand, there would be either two or three large windows.

Q. And do you recall whether or not these — what the status of these windows were?

A. These windows were broken out.

* * *

(177) Q. All right. Now, when you walk into this display room, what did you observe, if anything?

A. I observed that the interior of the building and all the furnishings and fixtures had been almost completely consumed by fire.

Q. Uh-huh. And did you see the remnants of anything in that particular show area?

A. Yes, sir, there were metal parts of beds, tables, chairs; but this was about all that was left that was — that which was metal.

Q. Uh-huh, now, how about the — did you ascertain in the show area what the ceiling — what type of ceiling was there?

A. It had had, apparently had had a drop ceiling, an accoustical type ceiling that had fallen down, had been burned or had been involved in the fire and had been dropped from the ceiling onto the floor.

Q. And above that type of ceiling, what type of ceiling was there?

A. It was, as I recall, would have been steel structure, metal deck.

(178) Q. And how was that when you observed it?

A. The steel was twisted, the girders, some of the support beams and so forth had all been very badly damaged by heat and fire.

* * *

(179) Q. Uh-huh. And after making these observations, what did you do next, if anything?

A. I think it was at that point that I returned to the station with the Chief, and then I picked up Detective Webb from the Waterford Police Department, who had been called to the scene the night before, to take some photographs of the damage, as I recall, upon the request of the fire chief. I picked up Detective Webb, and then we returned to the scene at which time I went into a more detailed examination of the building.

Q. Now, after you arrived back, approximately what time was this, sir?

A. This would have been in the area of 9:00 a.m. or 9:30 a.m.

Q. In the morning?

A. In the morning.

Q. All right. And at that time, Jim Webb, from the Waterford Township Police Department was with you, is that correct?

A. Yes, sir.

Q. By what means did you enter the building?

A. Once again, we walked in the front door.

* * *

(184) Q. All right. You may return to your seat. Now, after you made those observations, what did you do next, if anything?

A. I believe it was at that point that Detective Webb and I again left the scene, in order to get tools and materials needed to pick up the evidence that I felt was necessary to retrieve and keep.

Q. And where did you go?

A. We went to the Water Department, Waterford Township Water (185) Department, and procured a chain saw.

Q. Anything else?

A. We went to a — an insurance repair contractor, at which point I borrowed — be like a cutting knife, you cut tile or something with.

Q. Uh-huh, and what did you do next?

A. Then we returned to the scene, at which point I proceeded to cut out, with the chain saw and the knife, the pieces of carpeting that had the material imbedded in it. I cut out the pieces of stairway, the door frame, and then I also cut out some more pieces of carpeting that were located in the same room, but more towards the front of the building, that were saturated with some type of a liquid that smelled very strongly of gasoline.

Q. Ok, now, you indicated, sir, that you took certain things out, is that correct?

A. Yes, sir.

* * *

(188) Q. I now hand you what purports to be People's proposed exhibits, six, seven, eight, nine, ten, and 11, and I would ask you to look at these and see if you can identify same?

A. Yes, sir, once again, my handwriting, my rank and initials, and the date in question. The carpeting taken from the parts of the building, the northwest front part of the building, as written on here.

Q. When and where did they come into your possession, sir?

A. On the date of January the 22nd.

Q. And approximately what time?

A. Around the hours of, I would say between 10:00 and 11:00 a.m., the morning of January 22nd.

* * *

Cross Examination on the Exhibits

By Mr. Bain:

(190) Q. This was the morning after the fire?

A. Yes, sir.

Q. When you returned, was anyone else present in the store?

A. No, sir, not when I came back in the morning.

Q. Who was with you?

A. The first time, was the Chief, second time Detective Webb.

Q. Did you obtain permission from Mr. Tyler to go into the building?

A. No, sir, Mr. Tyler was out of town at that time.

Q. Did you make any effort to contact him?

A. I — no, I did not.

Q. Did you have a search warrant at that time?

A. No, sir.

Q. At any time, to the best of your knowledge, was a search warrant obtained to gain any of the evidence in this case?

A. No, sir.

Mr. Bain: I'll object, based on (191) illegal search and seizure.

The Court: Mr. O'Brien?

Mr. O'Brien: I have nothing further to urge, your Honor.

The Court: Mr. Bacalis?

Mr. Bacalis: May I have a couple questions, your Honor?

The Court: You may.

Cross Examination on the Exhibits

By Mr. Bacalis:

Q. Mr. Sommerville, when you went into the store, the store was not open for business?

A. That's right, sir.

Q. It was closed, obviously, the public was not invited, is that correct?

A. Yes, sir.

Q. Was it locked?

A. No, sir.

Q. How did you gain access?

A. The front door was open.

Q. I see, at that point, did you contact the owner of the building?

A. No, sir, I did not.

Q. You didn't try to get permission to go on the premises from either the landlord or the tenant, is that correct?

(192) A. I was advised — at that point, I did not know who the landlord was and I was advised the tenant was in Florida.

Q. My question was, you didn't get permission from either the landlord or the tenant?

A. No, sir.

Q. The fire was completely extinguished when you were there?

A. Yes, sir.

Q. We're talking now, — what time were you there Thursday morning?

A. It was about 8:00 o'clock or shortly thereafter.

Q. So your purpose in being in the building was solely and exclusively for investigation and gathering of evidence?

A. Yes, sir.

Q. You were not there for any purpose of fire fighting?

A. No, sir, I was not.

Mr. Bacalis: My objection to the evidence, your Honor, is on the same basis. It is an illegal search and seizure.

The Court: Objection overruled. Exhibits five, six, seven, eight, nine, ten and 11 are received in evidence.

* * *

Direct Examination

By Mr. Cooper (Continued):

(198) Q. And where did you go from that point?

A. That point, then I went on into the large area, sales room, display area, back into the building there. And proceeded to go over that area, very thoroughly, all the debris, the rubble and so forth, that was there, looking for any other signs or evidence that showed how this fire was caused.

* * *

Cross Examination on the Exhibit

By Mr. Bacalis:

(206) Q. Mr. Somerville, you didn't come to this scene until after the fire was extinguished, is that correct?

A. That's correct.

Q. Is it also true that there was no guard placed on the premises to keep the premises exactly the way the fire department left it?

A. There was no guard, no, sir.

Q. So there's a period of time then when these premises are totally unattended and the doors are open, right?

A. Right.

Q. Can you tell this Court how long the premises were unguarded with the doors open?

(207) A. Approximately for hours.

Q. And that would be from what time to what time?

A. About 4:00 a.m. till 8:00 a.m.

Q. Now, you have no way of knowing whether the premises, when you saw them, at approximately 8:00 or 9:00 a.m. on January the 22nd, were exactly the same as the firemen left them, is that true?

A. That's true.

* * *

JAMES WEBB

Direct Examination

By Mr. Cooper:

(244) Q. Approximately what time did you arrive at the scene?

A. This would have been some time after 3:30.

(245) Q. And what did you observe when you arrived at Tyler's Auction?

A. I observed firemen and I believe a fire truck, at Tyler's Auction. And could observe that there had been a fire there.

Q. Uh-huh. And what was the first thing that you did, if you can recall?

A. I believe, first thing I did was talk to Chief See.

Q. Uh-huh, and do you recall where this conversation took place?

A. I believe this was in front of the building.

Q. Front of the building, and after that conversation, what did you do next, if anything?

A. I believe I went inside, at this time, with Chief See.

Q. You went inside the building?

A. Yes, sir.

Q. Do you recall how you gained entrance to the building on that occasion?

A. Through the front entrance.

Q. Now, did you have any trouble getting through the front door?

A. No, sir, it was open.

Q. Was the front door intact?

A. The doors were intact, yes.

Q. After you went into the building, what happened next, if anything?

A. Chief See led me into the building on the north — excuse me, the (246) room on the northwest side.

Q. Ok, that would be like a showroom, here?

A. Yes.

Q. Where "t-i-o-n" is in auction, on the northwest corner?

A. Yes.

Q. And what happened after you walked into that room, if anything?

A. When I walked in that room, I observed two plastic containers.

Q. And where were they situated?

A. One was near the entrance of that room on the — be the east side of that room, near the door. And the other was across the room, approximately 15 feet from it.

Q. Ok. And after you observed these containers, what did you do next, if anything?

A. I'm not sure, at that time if I had my camera with me or if I went outside to get it, but I did take pictures.

Q. When you say take pictures, you took pictures of the containers?

A. Yes.

Q. And what happened next, if anything?

A. I was then led into the — what is called the gallery on this chart, by Chief See, to take pictures in there.

Q. When you say the gallery, what are you referring to?

A. Be the northeast side of the building, of this particular room, in there, another showroom.

(247) Q. Now, what was the condition of the building itself, as you entered it? What did you observe?

A. I observed the room completely gutted, this particular area.

Q. Was there any traces of fire or —

A. There was alot of steam. In fact, there was so much steam that — at the point of the stage area there, I couldn't see past that point.

Q. You mean into the — looking south into the building?

A. Yes, sir.

Q. And what did you do in the gallery room, if anything?

A. I took a few pictures, at that point, in the gallery.

Q. All right, and what did you do next, if anything?

A. Because of the steam, I advised Chief See that I could not take any more pictures.

Q. And what happened after that, if anything?

A. At that point, I advised Chief See to gather up the — whatever evidence he had and we'd take it to the police station.

Q. Ok, and what did you observe Chief See do, if anything?

A. I did not observe him at that time, I believe I left the building.

Q. Ok, and where did you go then?

A. I proceeded to the fire station. It was cold that night, and I had a cup of coffee.

Q. Ok, now, approximately what time did you leave Tyler's (248) Auction then, that night or that morning?

A. It would have been right around 4:00 o'clock.

Q. 4:00 o'clock in the morning?

A. Yes, sir.

Q. And what happened after you arrived at the fire station, if anything?

A. Chief See — I met Chief See there and he came in and obtained a plastic container.

Q. And what happened next?

A. At this time, we both proceeded to the Waterford Township Police Station.

* * *

(251) Q. Now, after you left the Tyler's Auction, at approximately 4:00 a.m., did you have an occasion to return back to the building?

A. Yes, sir, I did.

Q. And what time did you return back to the building, if you can recall?

A. This would have been shortly after 9:00 o'clock.

Q. 9:00 a.m.?

A. Yes, sir.

Q. That would be when?

A. The same morning of the 22nd.

Q. Same morning of the 22nd. And was anyone with you when you returned?

A. Assistant Chief Don Somerville.

Q. And where did you meet Lieutenant Somerville? If you can remember?

A. I believe he came to the station and picked me up. We went in his vehicle.

Q. Ok. And after you arrived at Tyler's Auction, what was the first thing that you did, if you can recall?

A. I went in with Chief Somerville, and made a visual check of the room at the northwest corner.

Q. The northwest corner, that was the corner in which the two (252) containers were found?

A. Yes, sir.

Q. How long were you in there, approximately?

A. I would say we probably weren't there more than ten or 15 minutes.

Q. Ok, and what happened next, after you went into that room, if anything?

A. We found things that we belived were pertinent, and we did not have tools to obtain these items, so we left the building, went to the Water Department, obtained a chain saw, and a cutting knife.

Q. Ok, now, when you say that you saw things that you deemed pertinent, what was that?

A. Found burn marks in the carpet, which we could not see earlier that morning, because of the heat, steam, and the darkness of the building. We also observed pieces of tape, with burn marks, on the stairway.

Q. And approximately, then, what time did you return back to the building?

A. I would say somewheres near 10:00 o'clock.

Q. 10:00 o'clock in the morning?

A. Yes, sir.

Q. And what happened after you arrived back the second time?

A. Chief Somerville proceeded to cut pieces of carpet out and (253) also cut the stairways out.

Q. And did you observe him do this?

A. Yes, sir, I did.

Q. What were you doing at that time, if anything?

A. About all I was doing is assisting him as he cut the pieces out. I would take them and put them in containers.

Mr. Bacalis: Excuse me, would you raise your voice, I didn't hear you.

A. I'm sorry. I was assisting him. I would take the pieces he cut out and put them in containers.

Q. Now, where was there wood taken from, Detective Webb?

A. The wood was taken from the stairway, leading from the northwest room, to the basement.

* * *

(255) Q. Approximately how long were you in the building on that date?

A. I'd say approximately 45 minutes to an hour.

Q. Ok, and now, what happened to the carpeting, and to the wood and — that was taken from the building?

A. This was all brought to the Waterford Township Police Station and marked and placed in the property room.

* * *

(256) Q. After those exhibits came into your possession, what did you do with them next, if anything?

A. Friday, these — they were taken to Lansing, and turned over to Dr. Krupp, at the Michigan State Health Lab.

* * *

(257) Q. All right, now, to your knowledge, when was Lieutenant, or Sergeant Hoffman called into the case?

A. This would have been the Monday following the fire. This would have been on the 26th of January.

Q. Uh-huh, and when did you first see Detective Hoffman?

A. I believe it was that morning.

Q. Uh-huh, and where did you see him at?

A. I don't recall if I met with him at the police station or the fire department.

Q. Now, prior to the time that you met with Sergeant Hoffman, had you determined who was the owner of the building?

A. I don't believe so.

Q. Did you determine who was the occupants of the building?

A. Yes, sir, I knew who the occupant was.

Q. And that was who?

A. Mr. Loren Tyler.

Q. Now, did you make any attempts to contact Mr. Tyler?

A. (No answer)

Q. After the fire?

A. I'm not sure, but I believe I had been told that he was out of town at this time.

* * *

(260) Q. And can you tell us what was in that closet, if anything?

A. There were a few papers and I believe some checks, possibly check books, I believe, laying on the floor. Not much in the closet, other than that.

Q. Ok. Now, did you ever ascertain what these boxes were?

(261) A. Yes, sir, those were the records that Mr. Maynard LeLonde had kept of the business previous to its transfer to Mr. Tyler.

* * *

Cross-Examination

By Mr. Bacalis:

(287) Q. All right, did you check this door which is shown as being the door, which shows as being the door in back of the display room, when you were there?

A. I recall going through the door, but that's all.

Q. Can you tell the jury how that door is locked or secured?

A. I don't recall, sir.

Q. Can you tell the jury whether or not it was locked or secured?

(288) Mr. Cooper: At what point in time?

Mr. Bacalis: At any point, whenever he saw it.

A. It was later secured, yes.

Q. You can't tell us when?

A. Yes.

Q. When was that?

A. 22nd, when it was boarded up.

Q. But when you were there, you were there twice on the 22nd, right?

A. Yes, sir.

Q. And you can't tell us how you found it when you first arrived on the 22nd, right?

A. The first time I arrived, I did not see it.

Q. Now, that's at 3:00 o'clock in the morning, right?

A. Approximately 3:30, yes, sir.

Q. You got some kind of artificial light to go through the building, right?

A. The firemen did, yes, sir.

Q. Did you use that artificial light?

A. No, sir.

Q. How did you see to keep from stumbling in the dark?

A. They had the rooms lit up for us.

* * *

Re-Cross Examination

(324) By Mr. O'Brien:

Q. Detective Webb, January 21st of 1970, I guess was the time of this fire, is that correct?

A. Yes, sir.

Q. The evening of that date. And you became actively involved in the investigation that evening, and the following morning, January 22nd?

A. It was on the following morning, yes, sir.

Q. Along about some time that morning or that next day, your attention was sufficiently taken by what you found at that scene, because you wanted to continue regular police officer's investigation, is that correct?

A. Would you repeat that, please, sir?

Q. You saw sufficient facts and circumstances to cause you to want to continue detective-type investigation, as of January 21, 1970.

A. Yes sir.

Q. Then from January the 21st, you went through the regular investigative procedures one would follow in a case such as this one?

(325) A. At this time, I did not know the regular investigative procedure. I did not investigate arson cases —

Q. You did your thing, however?

A. I did it with Sergeant Hoffman, yes, sir.

* * *

OSCAR FRISCH

Direct Examination

By Mr. Cooper:

(384) Q. And how long did you work for Mr. Tompkins?

A. For a period of about four or five months.

Q. And what did you do for him?

A. I made deliveries for him and did odd jobs around his house and around his store, also.

Q. His store, what do you mean?

A. That was Tyler's Auction, on M-59.

Q. During the course of your employment, would you ever have to go to Tyler's Auction?

A. Yes, sir.

Q. What would you do there?

A. I would clean up around the store, make deliveries and transfer furniture, from time to time, to warehouses or to the other stores.

Q. Now, did you have an occasion to be at Tyler's Auction on January the 18th, 1970, that would have been the Sunday before the fire?

A. Yes, sir, I did.

Q. And what were you doing on that particular day, there at Tyler's Auction?

A. I was moving furniture around for the auction that they were having at that time in the store, and helping them straighten (385) up. I was a spotter for them, also. Whenever they needed a higher bid, they'd look at me and I'd bid.

Q. Who was the auctioneer at that time?

A. That was Mr. Tyler and Mr. Hall, as I remember it.

Q. And other than Mr. Hall and Mr. Tyler, was there anyone else there that Sunday, assisting with the auction?

A. Yes, Mr. Tompkins was there, the Tompkins and Tyler children, and Mrs. Tyler, and myself.

Q. Now, did you have an occasion to be there on Monday, January the 19th?

A. Yes, sir, I did.

Q. And approximately what time did you arrive at Tyler's Auction on that date?

A. That was in the morning, as I remember, about, I would say, about 9:00 o'clock, 10:00 o'clock, maybe.

Q. And how did you happen to arrive on this particular morning?

A. We brought a truck load of furniture in — or used furniture.

The Court: Mr. Cooper, what was the date we're talking about?

Mr. Cooper: Monday, January the 19th.

Q. And when you say we arrived at Tyler's Auction, who are you referring to?

(386) A. Mr. Tyler, Mr. Tompkins and myself, sir.

Q. And did you see anyone else there on that Monday?

A. Yes, I did, now that I think of it. I am afraid that I may have mixed up a date here, so —

Q. Well, the date I'm referring to is Monday, January the 19th, the day after the auction.

A. Uh-huh.

Q. Do you remember being there on that particular date?

A. Yes, I do.

Q. And who was present when you were there, at the outset?

A. Oh, just Mr. Tompkins and Mr. Tyler.

Q. All right. Now, on that day, did you see any furniture being taken out of the store?

A. On Monday? Yes, sir, there was. Mr. Hall came later and took some furniture out of the store, lamps and what have you.

Q. And did you see anyone else there, other than Mr. Hall?

A. There was one or two other people there, but right off-hand, I can't recall who now.

Q. Do you recall what Mr. Hall was taking out of the auction on that date?

A. Yes, sir, he was taking lamps he had purchased there. He purchased every lamp in the store, and was putting them in his truck.

(387) Q. And approximately how long was Mr. Hall there, if you can remember or recall?

A. Well, towards noon, even later in the day, because he had quite a bit to take out.

Q. To your knowledge, how many loads of furniture did Mr. Hall take out?

A. If I remember correctly, I believe he was using two trucks, and he made at least two loads apiece with these trucks, taking, you know, small furniture and lamps and what have you, out.

Q. Other than Mr. Hall taking furniture out of Tyler's Auction on that Monday, did anyone else take any furniture out, to your knowwledge?

A. There were some people that picked up numerous small items that had been sold at the auction the previous day. And I believe — let me think, I think I made a delivery that date myself, from that store, if I remember correctly.

Q. Now, did you assist in taking any furniture out of that store on that date?

A. Yes, I did.

Q. What type of furniture were you moving out, on that Monday?

A. It was new furniture and bedroom suites that hadn't been sold that previous date, that were to be taken to the store in Flint to be put in storage.

(388) Q. What type of truck were you using on that Monday?

A. We were using two trucks, a '66 GMC pick-up, with a box on the back which was Robert Tompkins' truck. And Mr. Tyler's truck is a Dodge, straight van, about an 18 or 20-foot van.

Q. When you say you placed some furniture on a truck, how much furniture did you place on these trucks?

A. Well, we filled them up.

Q. And after you filled the trucks up, to your knowledge, where were they taken next?

A. As I said, most of the furniture that remained there was taken up to the store in Flint and put in the storeroom in that store. Some of the furniture was taken to an aluminum barn that Mr. Tompkins had on his property.

Q. To your knowledge, was there any storage area around the airport?

A. Yes, there was. At the old airport, Ferry Service.

Q. And to your knowledge, was any furniture taken there?

A. Yes, sir, there were chairs and let me see, I think one or two sofas, possibly three.

Q. Can you tell us how much furniture was in the auction then, Monday, the last time that you were there?

A. Oh, well, when we left the auction that evening, it was quite late in the evening, there was nothing left that was of any significant value. Probably, I would say, at the most, four (389) pieces, five pieces of new furniture.

Q. And did you have an occasion to come back again to Tyler's Auction?

A. Tuesday morning, following day, yes, I did.

Q. And what time did you arrive, if you remember?

A. Somewhere around, as I remember correctly, somewhere around 8:00 or 9:00 o'clock.

A. And whom did you arrive with or how did you arrive?

A. That morning, I came with Mr. Tompkins and Mr. Tyler in their — oh, excuse me —

Q. Where did you meet them at?

A. I met them at Mr. Tompkins' house.

Q. And how did you get from Tompkins' house to Tyler's Auction?

A. If I remember correctly, Mr. Tyler drove his white Ford pick-up with a box on it. And Mr. Tompkins and I went in the Dodge van that belonged to Mr. Tyler.

Q. What was the status of the truck you were in at the time you drove it from — or was in it from the time it was being driven from Tompkins' house to the store?

A. It was full of old junk furniture that had been loaded on the previous night.

Q. And, after you arrived at Tyler's Auction, what happened next, if anything?

(390) A. Well, we backed the truck up to the far back door on the side, and unloaded the truck in the store.

Q. Now, when you say the far back door, is this the door you're referring to, sir?

A. Yes, it is.

Q. That would be the door on the west side, the southern most part of the building?

A. Yes.

Q. Now, what kind of furniture was on that truck?

A. There were some old — I forget how many, right off, about six or seven old t.v. sets, that had been in the warehouse that Mr. Tompkins had, that were no longer operable. Some old over-stuffed furniture that was very, very old, torn and springs poking through. And old dinette sets that were broken and rather dilapidated and mis-used. My gosh, some old mattresses that were torn, and threaded, kind of moth-eaten.

Q. Now, what time did you unload this furniture, to the best of your recollection, on that Tuesday?

A. I would venture to say about 9:30 or 10:00 o'clock.

Q. Now, who was unloading the furniture?

A. All three of us, Mr. Tompkins, Mr. Tyler, and myself.

Q. Now, at that time, did you have a conversation with both or either of Mr. Tompkins and Mr. Tyler?

(391) A. Oh, yes, we discussed numerous things at that time.

Q. Now, who was present at this conversation?

A. Mr. Tompkins and Mr. Tyler, and myself.

Q. All right, and the conversation took place where?

A. Inside the store, and inside the truck, as we were unloading the furniture.

Q. Ok, and this would be on Tuesday then, is that correct?

A. Yes, sir, Tuesday morning.

Q. Now, you indicated that you had a conversation with Mr. Tyler?

A. Yes, I did.

Q. And do you see Mr. Tyler in the courtroom today?

A. Yes, sir, I do.

Q. Would you please point him out?

A. Yes, sir, that's Mr. Tyler, next to you, there.

Q. The gentleman to my left?

A. Yes, sir.

Mr. Cooper: Your Honor, would the record reflect that this witness has identified the respondent, Loren Tyler?

The Court: Any objection?

Mr. Bacalis: No objection.

The Court: The record may so indicate.

Q. And, now, specifically, to the best of your recollection, what (392) did Mr. Tyler say?

Mr. Bain: Objection.

Mr. O'Brien: Same objection, your Honor.

The Court: The jury will be instructed, in view of the fact that the other defendants were not present, this would not be admissible against any defendant who is not present. But you may take an answer, it will only be binding upon the person making the statement.

A. Mr. Tyler and myself were joking about the furniture and how dilapidated it was, how old it was. He was stating, for instance, that Mr. Lincoln had slept in this chair, and on this sofa, which I remember the statement because it was rather funny. And that none of the t.v.'s worked well. He instructed me to put the t.v.'s along the west wall towards the back of the store and line them up. And also instructed me to put mattresses on top of old chairs and tables and sofas, so — as he said — so that they would burn better.

Q. Now, was this the first time that you had an inkling that there was going to be a fire?

A. Yes, sir — well, no, sir, it wasn't the first time, but it was the first time that I felt quite confident that there would be.

Q. Well, when was the first time you ever heard it discussed?

(393) A. It was long before Christmas of — well, '69.

Q. And who was present when you first became aware that something might happen?

A. Just Mr. Tompkins.

Q. And, to the best of your knowledge, where did that conversation take place?

A. If I remember correctly, sir, we were riding in his car at the time, and he brought up the fact that there may be —

Mr. Bain: Objection.

Mr. O'Brien: Same objection, your Honor.

The Court: Objection sustained. These three respondents not being present, it would not be binding against anyone other than the person who made it. When is this supposed to have been, please?

Mr. Cooper: Before Christmas, your Honor, 1969.

The Court: It would be binding only as to the person who stated it, or in his presence.

Q. What did Mr. Tompkins tell you on that occasion?

A. He stated that there would be something that would happen after the first of the year that would be of great significance, and requested that I pick up old furniture and cardboard boxes and (394) things of that nature, rather made a game out of it with me, which he was prone to do.

Q. Ok, after that conversation, and before the Tuesday that we were talking about, did you have any further conversation with either Mr. Tyler and/or Mr. Tompkins concerning the fire?

A. I beg your pardon, sir, could you repeat that?

Q. After Mr. Tompkins mentioned that something was going to happen?

A. Yes, sir.

Q. And before the Tuesday that you were unloading the furniture, between those two times, did you have any further conversation with either Mr. Tyler and/fifi Mr. Tompkins, concerning the fire?

A. Yes, I did.

Q. Now, when did that conversation or conversations, take place?

A. The exact dates, really would escape me, on this subject, because Mr. Tyler hadn't mentioned it until that date to me, but Mr. Tompkins did, occasionally. As a matter of fact, later on, I was trying to guess what was going to happen. And he mentioned to me that there would possibly be a fire in the store.

Mr. Bain: I'm going to object to this conversation.

The Court: Same ruling, it is only binding upon the person making the statement.

(395) Mr. Bacalis: Your Honor, I'd request counsel to establish when this so-called conversation took place.

The Court: Establish when this took place.

Q. To the best of your knowledge, when did this conversation you just got done testifying to take place?

A. There was a conversation, one in particular, I recall, that was shortly after Christmas, possibly a week, that Mr. Tompkins and myself discussed this possible fire, because I was curious as to why he wanted all this stuff. And he said possibly there would be a fire, and that I should bring in as many old boxes and paper and what have you, as I could.

Q. Now, you indicated that you had a conversation with Mr. Tyler on the Tuesday before the fire?

A. Yes, sir.

Q. Did you have a conversation with Mr. Tompkins?

A. Yes, sir.

Q. On Tuesday before the fire?

A. Yes, sir, I did.

Q. And was it the same time you had the conversation with Mr. Tyler?

A. Yes, sir, it was.

Q. What did Mr. Tompkins say to you, if anything?

(396) Mr. O'Brien: Same objection, your Honor.

Mr. Bain: Same objection.

The Court: Same ruling, binding only on the person making the statement, not on the other defendants.

A. Mr. Tompkins also was joking about the placing of the furniture and the age of the furniture, that it was so old and dilapidated. And Mr. Tompkins, at that time, discussed some cardboard boxes that were in the back, with alot of paper in them, that we had brought in. And we also, at this time, discussed the fact I hadn't brought in a number of boxes that he felt I should have. He was quite disappointed with me over that, as I remember.

Q. Where was the cardboard that you went and got?

A. There was some cardboard outside, and there was some at the back of the store, piled against the wall. Some of the stuff outside we couldn't use, it was wet. I believe it had snowed that day, or it was damp, anyway.

Q. Now, was there any conversation on that Tuesday as to when the fire was to take place?

A. Yes, there was. Mr. Tompkins and Mr. Tyler both informed me that it would happen — well, the proceding day, on Wednesday.

Q. And what was this conversation —

Mr. Bacalis: Your Honor please, just (397) for the purpose of the record, I think it would be only fair that the witness tell the jury exactly what he claims the witness said, rather than characterize what he said.

The Court: Objection sustained.

Q. What, specifically, did Mr. Tyler tell you, on that Tuesday?

Mr. O'Brien: If the Court please, must we continue our objections?

The Court: No, the jury should understand that these conversations are binding only on the person who made the statement or the persons who were present and heard them. The other defendants not being present, this is not binding on these defendants. You may proceed.

A. As best as I can remember the conversation, I had inquired as to how soon this fire would take place or this supposed fire. And they told me that it would be Wednesday.

Q. Now, can you remember exactly who said what?

A. Not right off, I can't be certain as to which one stated that fact.

Q. All right. Now, was there any indication that Mr. Tyler was going on vacation?

A. Yes, sir, there was.

Q. When did this conversation come up?

A. The first time I recall hearing about Mr. Tyler going on vacation (398) was perhaps a week prior to the fire. And —

Q. What was the circumstances about, you know, that led up to you finding out that he was going on vacation?

A. Mr. Tompkins and I were — he had been discussing, again, the fire, and what was to take place. And he stated that Mr. Tyler would leave for Florida so things would not be too suspicious, as he put it, if I remember correctly.

Q. When did that conversation take place?

A. Like I say, about a week before the fire.

Q. Now, going back to Monday, do you recall any television sets being moved out on that Monday?

A. The Court: Now, for the record, what Monday are you speaking of?

Q. The Monday before the fire, that would be Monday, the 19th.

A. Yes, I do. As I remember, correctly, there had been a color t.v. set near the fireplace, as you face the fireplace on the right-hand side, in the corner.

Q. Now, where would the fireplace be, sir?

A. That would be on the top gallery, up there to the east wall.

Q. The east wall here?

A. Yes, sir, about in the center.

Q. About in the center?

A. Yes, sir.

Q. Now, to your knowledge, what happened to this television set?

(399) A. A gentleman had come in to repair the t.v. set. After he repaired it, we loaded it on Mr. Tyler's yellow Chevvy pick-up. To the best of my knowledge, it was delivered.

Q. Ok. Do you recall removing any cash registers from Tyler's Auction on that Monday?

A. Myself, I did not remove a cash register, but it was Mr. Tompkins that did take the cash register up to the store in Flint.

Q. Did they move a cash register in to take its place?

A. Yes, sir.

Q. Did you see the cash register that came in?

A. Yes, I did.

Q. Would you describe that cash register to us, please?

A. It was an old up-right type cash register, one of the big ones; they were trying to sell this cash register at the auction and it wouldn't move so —

Q. Now, did you see how many persons were carrying that cash register?

A. Just one person.

Q. One person carrying the cash register?

A. Yes, sir.

Q. Ok. Now, did you ever see any boxes of plaques in Tyler's Auction, while you were there?

A. Yes, I did.

Q. Did you ever see any on that Tuesday when you were unloading (400) the truck with Mr. Tompkins and Mr. Tyler?

A. Yes, I did. They were on — somewhere on the floor in the backroom and some were in the basement.

Q. Ok, and did you leave them in the back room and did you leave them in the basement?

A. Yes, I did. I had been told that they were moved up earlier, and moved around.

Mr. Bacalis: Just a minute, your Honor —

The Court: Objection sustained, the last phrase is stricken as to what he was told.

Q. Just tell us what you know, Mr. Frisch.

A. Yes, sir.

Q. Now, to your knowledge, did you see any of those plaques go out on the floor?

A. No, sir, I didn't see them go on the floor.

Q. All right, now, did you see any fold-away beds?

A. Yes, sir, I did.

Q. Now, what day, on Monday or Tuesday, did you see the fold-away beds?

A. On both days, sir.

Q. And where did you see them at the outset, where did you see them first?

(401) A. The first time I saw them was that Sunday, of the auction, and they were in the basement.

Q. And when was the next time that you saw them?

A. On that Monday, I helped move a few of them up into the top room. The rest were moved up later.

Q. Now, when you say hide-away beds, do these hide-away beds have mattresses on them?

A. No, sir, they didn't.

Q. Just plain regular hide-away beds, that folded up?

A. Yes, sir.

Q. Now, sir, are you familiar with — generally, Tyler's Auction, and what was in it, and this type of thing?

A. Yes, sir, I believe I am.

Q. Now, to your knowledge, before the fire, do you recall a closet in this particular area here, that would be the northwest room in the southwest corner?

A. Yes, sir.

Q. And to your knowledge, what was kept in that closet?

A. As I remember, there were files and some filing cabinets, old documents.

Q. To your knowledge, was any of that re-arranged?

A. Yes, it was. I helped in moving them out of that — some of them out of that room and boxes set on the (402) floor, around the walls.

Q. Uh-huh. And who assisted you?

A. Mr. Tompkins and Mr. Tyler.

Q. Uh-huh. And other than setting the records on the floor, the boxes on the floor, what else was done in that room, if anything?

A. In that room, the filing cabinets were cracked open slightly, left open, and the papers just set around inside the closet, the boxes were all open.

* * *

(454) Q. I now hand you People's exhibit number 46 and ask you whether you can identify the contents of that photo?

A. Yes, sir, I can.

Q. And specifically, that is a photo of what?

A. Well, this is a photo of the boxes that we had stacked along the wall that day when we were working in the store.

* * *

Q. Now, that picture shows certain records, where did you get those records?

A. They're the records that came out of the closet, directly above (455) the stairs.

Q. This area right here?

A. Yes, sir.

Q. Who took those records out of the closet?

A. Myself and Mr. Tompkins, and Mr. Tyler.

* * *

RICHARD HOFFMAN

Direct Examination

By Mr. Cooper:

Q. Now, were you assigned to or called in on a case concerning Tyler's Auction in Waterford Township?

(655) A. Yes, sir, I was.

Q. At that time, out of what Michigan State Police Post were you assigned?

A. Assigned to the Detroit Post.

Q. And to your knowledge, when were you called in on this investigation?

A. The morning of January 26, 1970.

Q. And do you recall what day of the week that was?

A. I think it may have been on Monday.

Q. And what was the first thing that you did, if you can recall?

A. I went and contacted Lieutenant Somerville, who called me, and Detective Webb, and discussed the fire, they wanted me to look at, for a short while, then we went out to the scene of the fire.

Q. This conversation took place at the Police Department, Waterford Township?

A. Police Department or Fire Department.

Q. From there, you went where, sir?

A. To 6959 Highland Road, at Tyler's Auction.

Q. That's in Waterford Township?

A. As far as I know, sir.

Q. After you got there, what happened next, if anything?

A. I made a cursory inspection of the inside of the building, and the general damage by the fire, the burning that took place. (656) I tried to determine whether or not — what — find the cause and origin of the fire.

Q. Now, sir, where did you — where did you go on that Monday morning, when you went into Tyler's Auction?

A. I believe the first place we looked at was the northwest section, because I had been told that there had been some containers found in this area here. I was first interested in this area here. From there, I looked down the stairs, checked the stairs, saw part of the stairway

was cut away, as Lieutenant Sommerville told me he had already done. There were some areas in here the carpet was cut out. I went from there over to this area here, checked the stage area, surveyed the damage to this area here. Surveyed the general debris in the area, tried to determine what the cause of the fire was.

Q. All right. Now, sir, did you take any pictures at Tyler's Auction?

A. Yes, sir, I did.

Q. And when did you take those pictures, sir?

A. I took some pictures that day, on the 26th. I took probably three or four rolls of pictures. In doing so, we sent our film to Lansing to be developed and they got lost in the mail, and I had to take some more afterwards.

Q. When did you take the second set, sir?

(657) A. On the 16th, February the 16th.

Q. February the 16th?

A. Yes, sir.

Q. Now, was there any difference in the building, when you took the pictures on the — what was the date you were there, at the outset?

A. The 26th.

Q. Was there any difference in the building on the 26th than when you took the pictures on February the 16th?

A. No, sir, there was not.

Q. Approximately how many pictures did you take on the 16th?

A. Probably four or five rolls.

Q. Now, the slides that you have here, are these the same pictures that are depicted in this group of photos that I have in my hand?

A. Yes, sir, they are.

Q. These are the ones that we have shown to counsel?

A. Yes, sir.

Mr. Cooper: Your Honor, at this particular point in time, we would move to introduce these slides into evidence.

The Court: You want those considered exhibit 51, is that right?

(658) Mr. Cooper: Yes, your Honor.

The Court: Any objection?

Mr. O'Brien: No objection, your Honor.

The Court: Any objection?

Mr. Bacalis: None, your Honor.

Mr. Bain: None.

The Court: Exhibit 51 is received in evidence. You may proceed to show the slides.

Q. Is it possible, Detective Hoffman, that you sit in your seat, or not?

A. I think probably I can. This is a picture of the back of the northwest room. It shows the open door going up the — from the basement, and the two — the double door at the north end of the building on the west side. I removed these pieces of plywood myself and opened the other door myself to take these pictures. Removed the plywood so I could have more light inside the building.

Q. Was there a piece of plywood on this door here, sir, when you arrived?

A. No, sir, that was nailed shut.

Q. This door here was nailed shut?

A. Because of the deadlock bolt, it was nailed shut, I opened it.

(659) Q. How about this door here?

A. It was shut. It was boarded up and I pushed it open.

• • •

(660) Q. All right.

A. I might point out just inside this door, on this same day, I found a small piece of fuse in the crack of the landing, about three-eighths of an inch long.

Mr. O' Brien: This is in February, Sergeant Hoffman?

A. Yes, sir.

Mr. O'Brien: February what?

A. 16th. This is the entrance to the front.

Q. And what is the significance of this photo, as far as your investigation is concerned?

A. When I took this picture, I had already had an interview with Mr. Tyler. When I interviewed him, we walked in this front door, and as he walked in the front door, he stated —

* * *

(662) A. This is the door we entered, this is just inside the front door of Tyler's Auction. And, as we walked in the door, Mr. Tyler exclaimed to me, he said, "My beautiful lamp that was hanging over this table sitting there," in, I guess you'd call the vestibule. He said, "It's gone."

* * *

(671) Q. What is the difference between the photo you have on the screen now, [#11] and People's exhibit number 46?

A. Well, in the photo I have on the screen, it shows where the boxes had been sitting and the smoke residue on the floor. Shows that they were there before the fire. Shows where they were spaced and sitting on the floor. I might add that I had these boxes removed by Sergeant Paul Brabant of the Warren Crime Lab, the Michigan State Police Warren Crime Lab, had these (672) boxes checked for fingerprints.

* * *

(673) A. Mr. Tyler advised me that these records were Mr. LaLonde's records, the previous owner's, and that Mr. LaLonde, at one time, had asked him if he could get those records, and Mr. Tyler stated he refused Mr. LaLonde those records, and they had been in the closet, where you see my camera box sitting by the door of the closet, and they had been filed there the day he left the scene and locked the doors.

* * *

(681) Q. Why were you interested in the circuit breaker, sir?

A. I was interested in the possible accidental cause by electricity.

* * *

A. This is number 21.

Q. It's a picture of what, sir?

A. This is a picture of the northeast display room, as you would call it, showing a picture of the fireplace. This is the remains of the furniture in this room. It shows the right-hand side of the fireplace.

Q. What was the significance of this photo in your investigation?

(682) A. It also shows the papers on the floor that could have possibly been used [as] trailers. You can see where the paper has been moved out, and it shows the floor clean right over the word number two there. It shows that there's not too much damage to the furniture itself in this area. Otherwise, the cushions are burned off, but the wood still remains. The chair and two couches, and other chairs over by the fireplace, there's still remains of wood. And I'd like to refer to this later, if I may. And there was sufficient amount of heat here, I'd say equivalent amount of heat here, as there was in the other part of the building.

* * *

(684) A. Mr. Tyler pointed to this area and he stated, "My new color t.v. is gone." Underneath this is a wall that separated another area from the furnace, underneath this is a pile of ashes where debris fell down through it. I checked through these ashes. I scraped through them. I found no chassis, remains of any screws, or any remains of any kind of appliance, t.v. set, or any kind of furniture at all in this area.

* * *

(686) Q. What is the significance of this photo?

A. I just wanted to show that there was no fusing of the wiring here, no sorting of the wiring, the insulation was just burned off, no tearing of the wire to show it could have been an accidental cause. This is general debris of the office area, the papers on the floor, the cash register and the safe. This is number 25.

* * *

(688) A. Yes, sir. I'd like to point out here something I'd like to bring up before — if I may get down —

Q. Yes, you may, I think there's a pointer there.

A. These areas right here, this darkened area right here along the wall, this is what we call a steel bar joice and in between these were two by fours that held the plasterboard ceiling up. Now, this was important in this fire because there's evidence of at least three explosions in this building. When this happened, you have an explosion down here, this would weaken the ceilings, causing plasterboard ceiling to come down and cover anything that's on the floor. Otherwise, preventing anything from burning. I've experienced this in other fires. The ceiling will be the first thing to come down. You have more heat up towards the ceiling than you do

the floor, causing the plasterboard ceiling to come down and cover things in this area down here. Now, when this happens, it tends to put out the fire in the lower area, it will protect and preserve evidence in this area. I found this many times. This is the way we sometimes determine the cause of the fire by clearing debris (689) that fell from the ceiling you can tell almost exactly where the fire originated at. Now these, to me, were one by two's along the wall here. Now, I didn't find no remains of any furniture in this area , over-stuffed furniture. There was alot of two by fours on the floor, from the ceiling, charred two by fours, a few springs, but no wood remains. Now, I checked furniture many times and I do a little re-upholstering myself, and the building up of a living room suite is usually hardwood. Remember, I referred to the other picture, that showed the northeast room, showed the two couches, showed the remains of the couches, just the cushions were burned off. I would say if there was a number of living room suites in this area, there should have been the remains, the same as in this room in the front. There's no evidence of this in this area at all.

Q. What about the pole, is the pole at all significant in your investigation?

A. I didn't hear you, sir?

Q. The poles?

A. This shows extreme heat, and the heat does rise and the heat is higher up in this area than down here. The poles start weakening in this area, start coming down. It shows the charring of one by twos along the wall here, are still intact. You have to ask yourself why wouldn't a piece of hardwood furniture (690) which would be a more substantial material, be still intact on this floor area here, when you have more heat up here than you do down here.

Q. What area are you talking about, on the floor itself?

A. I believe there was testimony in regards to a certain amount of living room suites on the floor, here, in the proof of loss. I believe the number is 24, there was no remains of the furniture in this area whatsoever.

Q. When you say this area, what area are you referring to?

A. I'm talking about the entire area, you could walk through here freely; there was considerable debris on the floor, but you didn't have to walk around furniture that would have been similar to the furniture that was in the front of the store. This is number 28, you can see that there's the remains of two by fours —

* * *

(693) Q. Where was this photo taken?

A. This was under the stairway, I believe, the round object you see there is some piping for the water supply, for the building. This is another piece of ash, this is number 37, the end of my pencil. Number 38 is a photograph of the furnace, showing there was no burning in this area whatsoever. This is a close-up of the furnace, shows no fire damage. I might add I (694) called in Consumer's Power, had them check the furnace out. They also took photographs, and their report to me is that as far as they were concerned, it was operating ok and had no new parts added to it. I might add I also had Sergeant Brabant come in and check this furnace for prints. He found no prints on the furnace. This is the left side of the furnace on the inside.

* * *

(705) Q. Now, sir, after the first date that you were at the fire, what was the first date that you were again at Tyler's Auction?

A. The 29th of January, 1970.

Q. All right. Now, who did you talk to on that date?

A. I talked to Mr. Tyler. I first talked to him at the Central Fire Station.

Q. How did you get ahold of Mr. Tyler on that date?

A. I believe that when I originally went there, Mr. Tyler was still out of State. As soon as he came back, Lieutenant Sommerville got ahold of him, had an appointment made to meet him at the fire station.

Q. So the first date you were in the building then was on the 29th, is that correct?

A. Yes, sir — no, sir, I was in the building on the 26th, and I went (706) with Mr. Tyler on the 29th.

Q. And who was present when you first saw Mr. Tyler?

A. Lieutenant Sommerville. There were some other members in the fire station, but we went into Mr. Sommerville's office.

Q. All right. And at that time, what happened?

A. I introduced myself to Mr. Tyler, and told him who I was. And I advised him of his rights.

* * *

(708) Q. What did Mr. Tyler say at that time?

A. We discussed the — where he was at during the fire.

Q. What did he tell you?

Mr. O'Brien: Objection.

A. He said he was out of —

The Court: Again, this is not admissible against anybody except Mr. Tyler. You may proceed.

A. He stated he was last at the building on Wednesday, January the 21st, he had secured the doors, locked them, and went and talked to Mr. Wells, told Mr. Wells to take in any deliveries he had and put them in his basement at the Quick Food Market. He talked about insurance, how much insurance he had on this building.

He stated that he had moved two loads of furniture into the building with the aid of Mr. Frisch. He agreed to go with us, a little later that morning, to go to the Tyler's Auction, to survey the scene. He stated to me that the — he thought it must be an arson. And he asked me what the going price on an arson was. And in the same breath, he says, "Is it $10,000 or $15,000?" I stated, no, it was a thousand dollars, to the best of my knowledge. And, after that, we went and maybe met with him a half hour later, at Tyler's Auction.

Q. Who was present at that conversation?

A. Best I can recall, Lieutenant Sommerville, myself, and Mr. Tyler (709) may have had somebody with him at the time, but it wasn't — I may have met the man, but I don't recall who it was.

Q. This, again, was on the 29th?

A. Yes, sir, it was.

Q. And what did Mr. Tyler say once he got to the auction, if anything?

A. Well, as we opened the door, which was padlocked by Lieutenant Sommerville, we entered the building. And when we got into the vestibule there, he first exclaimed, that his beautiful hanging lamp was gone. Then we went into the other areas. He stated that his t.v. was gone, and —

Q. Where was his t.v.?

A. The one that was sitting right to the right of the fireplace, his color t.v. set was gone. Going back to the interview at the fire station, he indicated — I asked him a question how many t.v's he had in the place. He said 11. We got to the Auction, he said he believed there were nine, at this time. We went into the northwest room. We observed the records sitting on the floor. And he kicked the records. And, at this time, he told me that Mr. LaLonde had requested these records at one time, and he

had refused him. And I asked him not to touch the records, because I wanted to preserve those for evidence. I believe that's about the extent of it, at that time.

* * *

(711) A.*** And I asked him [Tyler] again about the locking of the door, the securing of the door, before he left the Auction to go out of State. And he said he double checked the doors, used double two by fours to secure these doors.

Q. You say he used double two by fours, what areas was he talking about?

A. The areas he indicated, the two double doors on the west side of the building.

Q. Did he talk about the security of the front door?

A. We talked about the key, to his door. He stated he would never give his key to anybody.

* * *

(741) Q. I now hand you what purports to be People's proposed exhibit number 54, and ask you whether you can identify same?

A. Yes, I can, sir.

Q. And how can you identify it?

A. By my name and the date.

Q. When and where did the proposed exhibit come into your possession?

A. Came into my possession the morning of February 16, 1970. I took this out of the landing in the crack in the stairway landing, at the rear basement door of Tyler's Auction.

Q. And, for the purpose of the record, what is People's proposed exhibit 54?

A. To me, it's a short piece of green fuse, about three-eights of an inch long.

Mr. Cooper: At this time, your Honor, the People move to introduce into evidence, People's proposed exhibit number 54.

* * *

(743) Mr. Bacalis: Sergeant, when you seized this piece of evidence, you did not have the consent of the occupant, Mr. Tyler, to enter the premises, did you?

A. Not Mr. Tyler's

Mr. Bacalis: And, at that time, you did not have a search warrant, is that correct?

A. No, sir, I did not.

Mr. Bacalis: You entered the premises for the sole and exclusive purpose of making an investigation and seizing evidence, if you could find any, isn't that correct?

A. Yes, sir.

Mr. Bacalis: Isn't it also true that there was a period of time following the extinguishment of the fire, where there was no police or fire guard at the premises and the premises were left open?

(744) A. Yes, sir — I don't know about being left open. Every time I went to the premises, they were locked and secured.

Mr. Bacalis: Did you ever go to the premises and find the rear doors, the double doors, wide open?

A. Some time after that date, yes.

Mr. Bacalis: After what date?

A. After February 16th.

Mr. Bacalis: Well, I would object to the evidence, your Honor, on the grounds it's illegally seized, and violates the search and seizure rights.

The Court: Objection overruled, exhibit 54 is received in evidence.

* * *

(745) Q. I now hand you what purports to be People's proposed exhibits 55, 56, 57, 58, 59, and 60, and ask you whether you can identify same? I also hand you People's exhibit number 61, and ask you whether you can identify that?

A. Yes, I can.

Q. How can you identify each of these exhibits?

A. My initials and the date, and complaint number on each exhibit.

Q. When and where did these proposed exhibits come into your possession?

A. On the 16th day of February, 1970, at Tyler's Auction.

Q. Where did they come into your possession?

A. From Tyler's Auction.

* * *

(746) Mr. Cooper: At this time, the People move to introduce into evidence People's proposed exhibits 55 through 61.

The Court: Any objection?

Mr. Bacalis: Same objection, your Honor.

Mr. O'Brien: Same objection, your Honor.

Mr. Bain: Same objection.

Mr. O'Brien: I have one or two questions, if the Court please. Detective Hoffman, this is at the occasion of your taking the second set of pictures, is that right?

A. Yes, sir, it is.

Q. Mr. O'Brien: What was the date you were in there prior to that?

A. I was in there on the 26th.

Mr. O'Brien: Of January?

A. January.

Mr. O'Brien: This was February 16th?

(747) A. Yes, sir.

The Court: Objection overruled, exhibits 55, 56, 57, 58, 59, 60, and 61 are received in evidence.

Q. Now, calling your attention to exhibit number 61, why did you take possession of that exhibit?

A. Well, this was in an area that — in an area where there was fire and extensive damage, and it had a film of smoke residue over it, and I wanted to submit this to the laboratory to see if they could scrape off the smoke residue and analyze the smoke residue and see what they could come up with.

Q. Now, other glass that you found in the building, did you have occasion to look at that?

A. Yes, sir, originally, when I made my initial investigation, the glass that I found outside the building was relatively free of smoke residue. What I'm saying is that when you have an accidental fire, where the fire originates and burns up slow, there will be a film develop over the inside of the windows. But the windows that were broken out, there was no smoke residue on the inside of the windows. It was as clean as the outside. They were blown out, there was no time for a build-up of smoke residue. The windows were blown out completely. But the glass that did remain in the fire, as it progressed, they were smoke covered. And these are the samples I took.

* * *

Cross-Examination

By Mr. Bain:

(754) Q. Now, did you have occasion to check the front door of that building?

A. Yes, sir.

Q. All right. And how did you find that it locked?

A. When I saw the door, it had been chopped open by the firemen and there was a chain lying there with a padlock. The padlock was still locked, but the chain had been cut.

* * *

Cross-Examination

By Mr. Bacalis:

(859) Q. Sargeant, what I'm interested in having you show the jury is the furniture, the photograph shows that you saw on the premises.

A. There appears to be a spring here, I don't know if it's a bed spring from a mattress or — it appears to be, in this photograph, remains of some kitchenware, some steel chairs. This may have been a studio couch of some kind, with a metal frame.

Q. Is this part of the junk furniture?

A. Could be.

* * *

Q. You ought to be able to tell from the frame something about age or vintage?

A. From this, I can't tell, it's a frame of a type of lounge, or could have been a porch swing. This shows, like I stated before the metal remains, and non-combustible portions of kitchen chairs, on the stage area, I believe. Of course, this is the front room where I said there was a couch and some overstuffed chairs (860) remaining. This is again the stage area, showing only the remains of a few metal chairs. A lot of this debris is fallen down from the roof above the insulation. This

shows the bed springs of the beds that were mentioned, roll-away beds. I think this portion right here of this, it's the same portion over here. Another picture right here. Right here, the other end of this picture here. The same bed or same lounge, whatever it was. There is a remains, looks like an overstuffed chair right here, the wood portion. These are two by fours here. Two by fours here. These darkened areas appear to be two by fours. This area here shows the non-combustible metal parts of the kitchen chairs. This is two by fours here, two by fours, two by fours. This looks like shelving and portions of the ceiling that came down here. This is a closer view of this picture right along here, showing this chair right here, bottom side of it. Looks like a chair that has a frame remaining, looks like a possible similar type of a chair in this area here. And shows a close up of the bed again, here. These are two by fours here. And I see nothing in this area here at all.

* * *

MOTION BY MR. BACALIS

(917) Mr. Bacalis: I have a matter which I don't think Mr. Bain is much concerned about, your Honor. I wanted to make a motion to strike Detective Hoffman's testimony on the theory of illegal search and seizure. The evidence he learned was by illegal entry, as far as occupancy is concerned. I wish to strike his testimony, because it was got in an illegal manner.

The Court: Motion to strike is denied. Has anybody seen Mr. Bain?

* * *

MAYNARD LA LONDE

Cross-Examination

By Mr. Bacalis:

(921) Q. All right. Now, you say you didn't know Oscar Frisch very long, is that correct?

A. Not very long, no. Something around a year, I believe, or less.

Q. You remember what time of day it was when he called you on January 31st?

A. I believe it was in the early afternoon.

Q. And when he called, did he tell you that he knew something about who set this fire and he wanted to tell you about it?

A. That's correct.

Q. At that point, why didn't you tell Mr. Frisch to go straight to the police?

A. I did.

Q. And so you arranged to have a meeting in your home, that's your idea of going straight to the police?

(922) A. I'll explain that. I suggested to Mr. Frisch that he should take this information to the police. Mr. Frisch was quite upset when he was telling me about this. He said he feared for his safety and his family's. And he said that he didn't want it to become known that he was giving this information. So that is why I called Detective Webb and told him of the conversation with Mr. Frisch. And we met at my home that evening, with Lieutenant Webb and another detective.

* * *

(926) Q. Mr. Tyler paid his rent through January 31st, isn't that correct?

A. He paid January's rent in February, the first part of February.

Q. My question was —

A. He was a month behind.

Q. My question was he paid the rent through January 31st, 1970, did he not, even though he paid it late?

A. Yes, he paid it around the 3rd or 4th of February, that's correct.

Q. So when you say he didn't pay his rent, you're talking about February, 1970, right?

A. That would be right, yes.

(927) Q. You're talking about a rent a month in advance, for a month in advance, on February ?

A. That's right.

Q. And during this period of time, that Mr. Tyler didn't pay his rent in February, you took no steps whatsoever, to terminate his lease and put him out, right?

A. No, I went over and tried to collect it, numerous times.

Q. Well, other than making demand for the rent, you didn't take any steps to terminate his lease or occupancy, put him out?

A. I did not.

* * *

LYLE SWEET

Direct Examination

By Mr. Cooper:

(932) Q. Now, in the early part of February, 1970, did you have an occasion to go into Tyler's Auction on Highland Road?

A. Yes, I did.

Q. And who was with you, if you can recall?

A. Detective Webb, from the Waterford Police Department, and Office Hoffman, from the State Arson Squad.

Q. Can you recall what time of day, morning or afternoon, or what part of the day were you there?

(933) A. I'm not sure, but I believe it was around 10:00 o'clock in the morning.

Q. Why were you there, sir?

A. To see what parts of televisions may exist.

Q. Were you there at anyone's request?

A. Yes, Detective Webb and Officer Hoffman.

Q. Now, once you got there, sir, what is the first thing you did, if anything?

A. Well, we entered the building, and sorted the debris.

Q. And where did you go, once you got inside the building?

A. Well, pretty much all over it. I had been in there prior. I knew about where the televisions were in the building.

Q. You went to a particular area in the building?

A. Yes.

Q. And when you arrived in that particular area, what did you do?

A. Well, we sorted the debris over to find any parts of televisions that may exist.

* * *

(934) Q. Did you take possession of any parts or anything like that?

A. Yes, the chassis, I took possession of.

* * *

(935) Q. Now, approximately how long did you spend in the building on that date, sir?

A. Oh, I would say probably a couple hours anyhow.

Q. And, other than the t.v. chassis, themselves, did you find any other tubes or anything else?

A. No, this would probably pretty well burn up. The chassis is the only thing which would survive, anyway.

* * *

Cross Examination on Exhibit

By Mr. Bacalis:

(939) Q. Mr. Sweet, were you there with the permission of Mr. Tyler when you were examining these tubes and chassis?

A. I was at the request of Detective Webb and Detective Hoffman.

Q. And was there any search warrant shown to you?

(940) A. I don't remember.

Q. Well, you were there solely and exclusively for the purpose of the police?

A. Yes.

Mr. Bacalis: I would object, also, your Honor.

The Court: Objection overruled, exhibits 64, 65, 66, and 67 are received in evidence.

* * *

JOHN ROEPER

Direct Examination

By Mr. Cooper:

(941) Q. Now, did you have an occasion to look at the furnace at Tyler's Auction, on Highland Road?

A. Yes, I did.

Q. And when did you look at that, sir?

A. I can't tell you as to the date, it was right after the fire.

Q. Uh-huh, and by whose invitation were you there, and for what reason? Who were you called by?

A. By the State Police.

(942) Q. And who was with you when you looked at the furnace?

A. There was two other gentlemen from Consumer's Power, J.C. Lane and Jim Wilcox.

Q. And was there anyone from the State Police?

A. Yes, Mr. Webb, and the — another gentleman, I believe it was the insurance investigator or — I don't know just exactly.

Q. Now, did you, in fact, look at the furnace, sir?

A. Yes, I did.

Q. What did you do, once you were down to the furnace room, looking at the furnace?

A. Well, we checked the furnace over and we also took some pictures of the furnace.

* * *

LOREN TYLER

Direct Examination

By Mr. Bacalis:

(1213) Q. Now, how did you lock up your building at night?

A. Well, there was only one way in the store from the outside, with keys, and that was the front entrance. The side doors and the unloading doors is what we call the side doors, were double doors, and they were secured with double two by fours on the inside. The only other door that wasn't secured with a two by four was a door in what we call the Colonial Room, at the foot of the stairs, the steps, which I kept nailed shut, and I also kept a two by four brace from the door to the inside wall of the stairwell.

Q. Now, with reference to the locks, how many locks were on those front doors?

A. There was one key and tumbler in each door, and I always kept a locked chain and padlock, besides, on the handles.

* * *

(1215) Q. Mr. Tyler, I show you People's exhibit Number 44, and ask you if that's the chain and lock you had on the door?

A. It looks like it.

Q. Is that the type of chain and lock that you had on the door?

(1216) A. Yes, sir, it is.

Q. And did you pass that through the door handles, is that how you locked or secured the building?

A. Yes, sir.

Q. So altogether then there were three locks, is that right?

A. Yes, sir.

Q. The two tumblers on each of the double doors?

A. One lock on each door, that took a key, and the key for the padlock.

* * *

(1229) Q. Now when you came back on the 29th, did you inspect your building at Tyler's Auction?

A. No, I didn't.

Q. When is the first time you looked at it?

A. Sometime during the day of the 29th, with Detective Hoffman and a gentleman from the fire department.

Q. And you went over to the building with them?

A. Yes, sir.

Q. Did they ask your permission to go in?

A. No, sir.

Q. Why did you go in?

A. Because they had requested me to.

Q. Now, when you were in the building, did you observe whether or not there were any evidences of the building being locked up, secured, or whether it was partially opened, or how would you describe it?

A. The morning that I went into the Auction, the first time after the fire,, was either the 29th or 30th, with Detective Hoffman, and (1230) Lt. Sommerville from the Fire Department. They opened the front door with a key. And we went in and as we went through it, started down, the steps, the door on the right-hand side of the steps, the — was completely open. There was nothing on it, the plywood had been taken off. We could have walked around the building and come in without a key.

* * *

Q. Did you examine the premises with both of those officers on that occasion, yourself?

A. Not very well, but we — I would say that we were in the store a matter of 15 minutes, if we were in there that long.

* * *

(1234) Q. Now, when you made this inspection of your store, after you returned on January 29, 1970, did anybody ask you for consent to enter the premises?

A. No, sir.

Q. Did you give consent?

A. No, sir.

Q. Then why did you go into the premises with the police officer?

A. Like I stated Tuesday, I went in at their command, they asked me to go up there with them.

Q. Now, during this period of January 22nd to April the 22nd, how would you describe the security precautions as to your building, Tyler's Auction Incorporated?

A. Very poor.

(1235) Q. Why do you use that description?

A. I can't even begin to tell you the times that I've went there and for one time for over one week's stretch at a time, there was some windows that had never been boarded in the whole week's period. And, in fact, on two occasions, we went there and there was kids in the neighborhood playing house or games in and out of the back doors.

* * *

Cross Examination

By Mr. Cooper:

(1281) Q. So, at any rate, at the time of the fire, this one would be the accurate one then, People's exhibit number 36?

A. Yes.

Q. Now, is this the file cabinet in which your records were in, for Tyler's Auction?

A. Some of them.

Q. That were destroyed?

A. Some of them.

Q. Now, were you able to salvage any records from Tyler's Auction out of this filing cabinet?

A. Are you kidding? I never got a thing out of that store.

Q. All right, my question to you is whether or not you got any records out of this file?

A. No, sir, I did not.

* * *